

October 4, 1990

REPORT TO THE COMMITTEE ON TRANSPORTATION AND LAND USE
STREET VACATION - CONCEPT OF VACATING STREET AND RESERVING THE
RIGHT TO REDEDICATE AT SOME FUTURE TIME

The Transportation and Land Use Committee referred the issue of the legality of vacating a street and reserving the right to rededicate a street to this office for comments.

Under the provisions of the Public Streets, Highways, and Service Easements Vacation Law (California Streets and Highways Code Section 8300 et seq.) the City Council is authorized to vacate a street only if it makes a finding that the street "is unnecessary for present or prospective public use" (Section 8324). A proposal to retain the right to rededicate the street in the future is directly contrary to the concept of making the above finding.

It is noted, however, that Section 8340 of the Streets and Highways Code specifically authorizes a city to reserve public utility easements in street areas to be vacated.

It may be that in some circumstances the City Council is convinced that the right-of-way in question will never be needed for public street purposes generally but is uncertain whether or not the street area may be needed for utilities at some time in the future. In such case, the Council could vacate the street and reserve public utility easement rights in the entire vacated area. The result of such a reservation would be that the owner of the fee interest underlying the vacated street would be unable to construct any buildings within the vacated street area. Also, if at some future time it is determined that the area is, in fact, needed for street purposes, the City could reacquire the right-of-way by eminent domain if necessary for a price which would reflect the existence of the utility easement.

One significant difference between a public street easement and a general utility easement, however, is that the owner of the underlying fee is entitled to include the utility easement area in square footage in determining the number of units which can be placed upon a parcel, whereas, the square footage of a public street easement cannot be included for such purpose.

In summary, if the City Council is not convinced that a street proposed for vacation may not be needed at some future time for public street purposes, the Council should not vacate

the street. A reservation for a future street cannot be retained in connection with a street vacation, but a general utility easement may be reserved.

Respectfully submitted,
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